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Reorganized Debtors)*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION,**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Reorganized  
Debtors.**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Reorganized Debtors

*\* All papers shall be filed in the Lead Case, No.  
19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Court Case No. 4:22-cv-02833-HSG

**REORGANIZED DEBTORS'  
STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON  
APPEAL**

**[Re: Dkt. No. 12311]**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), PG&E Corporation and Pacific Gas and Electric Company, as reorganized debtors (collectively, the “**Debtors**” or the “**Reorganized Debtors**,” as applicable) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), submit this statement of issues and designation of record on appeal.

**I. STATEMENT OF ISSUES ON APPEAL**

The issues on appeal are:

(i) Whether the bankruptcy court erred in concluding that its denial of the Reorganized Debtors’ request to modify the Plan injunction to compel arbitration of the California Department of Water Resources’ (“**CDWR**”) proof of claim [Claim No. 78014] and the issue of whether CDWR had properly terminated the *Agreement of Cotenancy in the Castle Rock Junction-Lakeville 230-kV Transmission Line among Pacific Gas and Electric Company, State of California Department of Water Resources, Northern California Power Agency and the City of Santa Clara* (the “**Cotenancy Agreement**”), was also a denial of the Reorganized Debtors’ right to arbitrate its non-core affirmative claims against the CDWR under the Cotenancy Agreement, even though the Reorganized Debtors had not filed an affirmative claim against CDWR or claim objection to CDWR’s proof of claim.

(ii) Whether, after denying the Reorganized Debtors’ request to arbitrate the proof of claim dispute and CDWR’s termination of the Cotenancy Agreement, and after the Reorganized Debtors submitted that they would consent to the relief sought by CDWR in its *Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources’ Claim No. 78104 Be Paid* [Dkt. No. 11887] (the “**CDWR Motion**”) by agreeing to pay CDWR’s proof of claim in full and not to contest that the Cotenancy Agreement was not executory as to CDWR and could not be assumed as to CDWR, the bankruptcy court erred in determining that the issues before it through the CDWR Motion had not been resolved in full.

(iii) Whether, after denying the Reorganized Debtors’ request to arbitrate the proof of claim dispute and CDWR’s termination of the Cotenancy Agreement, and after the Reorganized Debtors submitted that they would consent to the relief sought by CDWR in the CDWR Motion by agreeing to pay CDWR’s proof of claim in full and not to contest that the Cotenancy Agreement was not

1 executory as to CDWR and could not be assumed as to CDWR, the bankruptcy court erred in  
2 determining that the Reorganized Debtors' non-core affirmative contractual claim against CDWR  
3 under the Cotenancy Agreement was before the bankruptcy court, even though the Reorganized  
4 Debtors had not filed an affirmative claim against CDWR or claim objection to CDWR's proof of  
5 claim.

6 (iv) Whether the bankruptcy court exceeded its jurisdiction by entering a final judgment on  
7 the merits on the Reorganized Debtors' non-core affirmative contractual claim against CDWR under  
8 the Cotenancy Agreement, even though the Reorganized Debtors had not consented to the bankruptcy  
9 court entering final judgment on its claim and had not put its affirmative claim at issue.

10 (v) Whether the bankruptcy court erred in denying the Reorganized Debtors' request to  
11 present its non-core affirmative contractual claim against CDWR through an adversary proceeding  
12 and in determining that the Reorganized Debtors had waived their rights to the procedural protections  
13 of an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure.

14 (vi) Whether the bankruptcy court erred in disallowing the Reorganized Debtors' non-core  
15 affirmative contractual claim against CDWR under the Cotenancy Agreement on the merits.

16 (vii) Whether the bankruptcy court erred in determining that CDWR's interpretation of the  
17 Cotenancy Agreement was correct.

18 (viii) Whether the bankruptcy court erred in determining that CDWR did not owe any  
19 estimated future removal costs or any other damages to PG&E or the other cotenants under the  
20 Cotenancy Agreement.

21 (ix) Whether the bankruptcy court otherwise erred in its determinations against the  
22 Reorganized Debtors under the Cotenancy Agreement.

23 (x) Whether the bankruptcy court erred in denying the motion to intervene of non-debtors  
24 Silicon Valley Power and Northern California Power Agency, and then making a dispositive ruling  
25 and final judgment by default on their contractual claims against the California Department of Water  
26 Resources arising under the Cotenancy Agreement.

## II. DESIGNATION OF RECORD ON APPEAL

The Reorganized Debtors hereby designate the following items to be included in the record on appeal, each of which includes any and all exhibits and addenda attached thereto and filed therewith and any and all documents incorporated by reference therein:

Docket items from *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

| Dkt. No. | Docket Items   | Date       |
|----------|--|------------|
| 263      | Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief   | 02/01/2019 |
| 7037     | Notice of Filing of Plan Supplement in Connection with Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020   | 05/01/2020 |
| 7276     | California State Agencies' Objections to Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to the Plan and Proposed Cure Amounts [Docket No. 7037]   | 05/15/2020 |
| 8048     | Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 Filed by Debtor PG&E Corporation  | 06/19/2020 |
| 8053     | Order Confirming Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020  | 06/20/2020 |
| 11887    | California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid  | 02/01/2022 |
| 11888    | Notice of Hearing on California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid                         | 02/01/2022 |
| 11889    | Declaration of Ghassan Alqaser in Support of California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid | 02/01/2022 |
| 11895    | Certificate of Service   | 02/02/2022 |

| <b>Dkt. No.</b> | <b>Docket Items</b>  | <b>Date</b> |
|-----------------|--|-------------|
| 11896           | Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources  | 02/02/2022  |
| 11897           | Declaration of Joshua S Levenberg in Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources  | 02/02/2022  |
| 11898           | Notice of Hearing on Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources   | 02/02/2022  |
| 11914           | Certificate of Service of Alain B. Francoeur Regarding One Hundred Eighth Omnibus Objection Stipulation, California Department of Water Resources Arbitration Motion, Levenberg Declaration, and Notice of Hearing   | 02/09/2022  |
| 11937           | The Reorganized Debtors' (I) Preliminary Opposition to California Department of Water Resources' Motion for Order Determining that Castle Rock Agreement with PG&E Cannot be Assumed and that the Department of Water Resources' Claim No. 78104 be Paid and (II) Request, in the Alternative, for a Status Conference | 02/16/2022  |
| 11942           | California Department of Water Resources' Opposition to Reorganized Debtors' Motion for Order Modifying Plan Injunction and Compelling Arbitration   | 02/16/2022  |
| 11962           | California Department of Water Resources' Reply to the Reorganized Debtors' Preliminary Opposition to Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No 78104 Be Paid   | 02/23/2022  |
| 11963           | Reply in Further Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources  | 02/23/2022  |
| 11964           | Supplemental Declaration of Joshua S Levenberg in Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources   | 02/23/2022  |
| N/A             | Docket Text Order  | 02/28/2022  |

| <b>Dkt. No.</b> | <b>Docket Items</b>   | <b>Date</b> |
|-----------------|---|-------------|
| 11999           | Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources  | 03/08/2022  |
| 12000           | Order Granting California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and Claim No. 78104 Be Paid  | 03/08/2022  |
| 12001           | Order Denying Debtors' Motion for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources   | 03/08/2022  |
| 12024           | Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement Cannot Be Assumed and that the Department of Water Resources' Claim No. 78014 Be Paid                                    | 03/15/2022  |
| 12035           | California Department of Water Resources' Opposition to the Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement Cannot Be Assumed and that the Department of Water Resources' Claim No. 78014 Be Paid | 03/17/2022  |
| 12054           | Order Denying Motion to Intervene by City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency   | 03/21/2022  |
| 12076           | Memorandum of the Reorganized Debtors Regarding Claim of California Department of Water Resources   | 03/25/2022  |
| 12077           | Declaration of Joshua S Levenberg in Support of Memorandum of the Reorganized Debtors Regarding Claim of California Department of Water Resources   | 03/25/2022  |
| 12129           | California Department of Water Resources' Reply to PG&E's Memorandum Regarding Department of Water Resources' Claim No. 78104 and Further Briefing of Issues; Request for Order Staying Arbitration   | 04/08/2022  |
| N/A             | Docket Text Order   | 04/10/2022  |

| <b>Dkt. No.</b> | <b>Docket Items</b>   | <b>Date</b> |
|-----------------|---|-------------|
| 12147           | Tentative Ruling Re Dispute Between Debtors and the California Department of Water Resources  | 04/11/2022  |
| 12207           | Order Regarding Dispute Between Debtors and California Department of Water Resources  | 04/22/2022  |
| 12310           | Notice of Appeal and Statement of Election to Have Appeal Heard by United States District Court for the Northern District of California | 05/05/2022  |
| 12311           | Notice of Appeal and Statement of Election to Have Appeal Heard by United States District Court for the Northern District of California | 05/05/2022  |
| 12322           | Courts Certificate of Mailing   | 05/05/2022  |
| 12323           | Courts Certificate of Mailing   | 05/05/2022  |

Hearing Transcripts from *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

| <b>Dkt. No.</b> | <b>Transcripts</b>                | <b>Date</b> |
|-----------------|-----------------------------------|-------------|
| 8066            | June 19, 2020 Hearing Transcript  | 06/22/2020  |
| 11986           | March 2, 2022 Hearing Transcript  | 03/03/2022  |
| 12156           | April 13, 2022 Hearing Transcript | 04/14/2022  |

Proofs of Claim filed in *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

| <b>Claim No.</b> | <b>Claimant</b>                          | <b>Date</b> |
|------------------|--|-------------|
| 78104            | California Department of Water Resources | 10/18/2019  |

The Reorganized Debtors reserve the right to designate additional items for inclusion in the record or restate the issues presented on appeal.

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1 Dated: May 18, 2022

**KELLER BENVENUTTI KIM LLP**

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4 By: /s/ Jane Kim  
Jane Kim

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6 *Attorneys for the Appellants (Debtors and*  
*Reorganized Debtors)*